

REMARKS

I. INTRODUCTION

Claims 1, 2, 4, and 6-15 are now pending in the present application, where claims 1 and 4 are independent claims. Claim 6 has been objected to as being dependent upon rejected independent claim 4, but is otherwise allowable. Claims 4 and 8 have been amended as shown above. Based on the following remarks, Applicants respectfully request reconsideration and allowance of the application.

II. REJECTION UNDER 35 U.S.C. § 103(a) IN VIEW OF THE COMBINATION OF DALAN ET AL. AND KLARENBECK ET AL.

Claims 1, 2, 4 and 7-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,922,375 to Dalan et al. in view of E.P. Patent No. 0603981 to Klarenbeek et al. In response, Applicants respectfully traverse because the cited references do not disclose or suggest "blending and homogenizing the acidified solution of whey proteins with one or more fats to form a whey protein-stabilized fatty emulsion" as recited in independent claims 1 and 4.

Dalan et al. disclose a soluble whey protein fraction. In particular, Dalan et al. disclose an aqueous protein solution which is pH adjusted to a level between 4.4 and 5.0. The acidified solution is subsequently subjected to a separation process, such as centrifugation, filtration or decantation. The only mention of an emulsion is found in Example 5, where an emulsion is formed by the combination of peanut oil and an aqueous protein solution. The aqueous protein solution is a combination of a solution and a protein powder obtained by the process disclosed in Example 3. The protein powder of Example 3 is obtained by dissolving protein isolate in water, acidifying and heating the solution to 40 degrees C, then further acidifying, filtering, sterilizing, concentrating and drying the solution into a powder. Dalan et al. do not disclose any additional acidification of the protein powder or any acidification subsequent to combining the protein powder and the solution as disclosed Example 5.

Klarenbeek et al. disclose to the preparation of a heat-stable oil-in-water emulsion. Klarenbeek et al. disclose the pH of the oil-in-water emulsion adjusted upwardly to at least 6.5, and preferably between 6.5 and 8.0. After the pH adjustment the emulsion is heated for a period of time, in particular 0.50 to 5 minutes and at a temperature of 75 to 140°C. After the emulsion is heated and cooled, the pH of the emulsion is downwardly adjusted to between 4 and 5.

The combination of Dalan et al. and Klarenbeek et al. do not disclose, teach or suggest all the elements of independent claims 1 and 4. As stated above, the cited references do not disclose or suggest "blending and homogenizing the acidified solution of whey proteins with one or more fats to form a whey protein-stabilized fatty emulsion." Dalan et al. disclose a soluble whey protein fraction in a clear aqueous solution. While Example 5 of Dalan et al. discloses a fat and aqueous protein solution emulsion, the aqueous protein solution is not acidified. The protein powder of Example 3 was acidified prior to sterilization, clarification, concentration, and drying, but the combination of the protein powder and solution, as detailed in Example 5, is not acidified. Further, Dalan et al. do not disclose, teach or suggest an emulsion having the fat and whey protein content as detailed in independent claims 1 and 4. In addition, Klarenbeek et al. do not disclose an emulsion formed by a fat and an acidified solution of whey proteins, but instead disclose the pH of the oil-in-water emulsion adjusted upward to between 6.5 and 8.0. Further, Klarenbeek et al. do not disclose, teach or suggest acidifying the aqueous protein prior to forming the emulsion. Instead, Klarenbeek et al. disclose an adjustment of the emulsion pH. Therefore, Dalan et al. and Klarenbeek et al. do not disclose, alone or in combination, all the elements of independent claims 1 and 4 because neither disclose, teach or suggest "blending and homogenizing the acidified solution of whey proteins with one or more fats to form a whey protein-stabilized fatty emulsion."

Applicants also respectfully traverse because the motivation cited by the Examiner, "to adjust the protein to fat ratios," is an inadequate motivation for modifying Dalan et al. with the emulsion of Klarenbeek et al. The stated motivation must direct one to the suggested combination (MPEP 2143.01 IV). Here, the knowledge that the protein or fat content in a given

emulsion could be adjusted does not provide a motivation for combining the references, but is merely a conclusory statement. Thus, there is no motivation for modifying the soluble fraction of whey protein as disclosed by Dalan et al. with the fat-protein emulsion of Klarenbeek et al.

For the reasons stated above, in reference to independent claim 1, Applicants submit that the combination of Dalan et al. and Klarenbeek et al. do not disclose, teach or suggest all the elements of independent claim 1, alone or in combination, and that, therefore, the 35 U.S.C. §103(a) rejection of independent claim 1, and its dependent claim 2, has been overcome. Accordingly, Applicants respectfully request that this rejection of claims 1 and 2 based on Dalan et al. and Klarenbeek et al. be withdrawn.

Further, for the reasons stated above, in reference to independent claim 4, Applicants submit that the combination of Dalan et al. and Klarenbeek et al. do not disclose, teach or suggest all the elements of independent claim 4, alone or in combination, and that, therefore, the 35 U.S.C. §103(a) rejection of independent claim 4, and its dependent claims 7-15, has been overcome. In addition, Applicants submit that the objection to dependent claim 6 is traversed, as the rejection of independent claim 4, from which dependent claim 6 depends, has been overcome. Accordingly, Applicants respectfully request that this rejection of claims 4 and 7-15 based on Dalan et al. and Klarenbeek et al. and the objection of claim 6 as improperly depending from rejected claim 6 be withdrawn.

III. CONCLUSION


For all of the reasons mentioned above, Applicants respectfully request reconsideration and allowance of all pending claims. The Examiner is invited to contact the undersigned attorney to expedite prosecution.

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The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY

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